



Insurance and Real Estate Committee  
February 26, 2013

Senate Bill 953: An Act Concerning Disclosures for Universal Life Insurance Policies

Testimony of Gina Collopy O'Connell  
Senior Vice President  
The Phoenix Companies, Inc.

Good afternoon Senator Crisco, Representative Megna, Senator Kelly, Representative Sampson and distinguished members of the Committee. My name is Gina Collopy O'Connell and I am a Senior Vice President of The Phoenix Companies, Inc. headquartered here in Hartford, Connecticut. I am here this afternoon to offer testimony on S.B. 953, entitled an "Act Concerning Disclosures for Universal Life Insurance Policies". We have a view on the bill as currently written as well as concerns about certain changes that may be suggested by certain proponents, after this period of public review and comment is over.

Although I am confident that many of you are familiar with Phoenix, for those of you who are not, Phoenix is a financial services company headquartered in Hartford since 1851. Our other main facility is in East Greenbush, New York, and we have remote staff located throughout the United States. Phoenix employs approximately 600 people, with about 350 in Hartford.

I am here today in order to provide guarded support for the bill before you. I use the term "guarded" because, in this legislative process, I presume that you must either support a bill or oppose it. In this instance, although Phoenix does not necessarily oppose the bill, we do respectfully submit that the bill is unnecessary in light of existing Connecticut law and the National Association of Insurance Commissioners Model Act, both of which regulate the existence and disclosure of the underlying rights of the policy holder and insurance company. Although the language of the bill seems innocuous, the requirement to post what seems to be the obvious on the front cover of the policy translates into a potentially costly and burdensome exercise to alter policies sold in one state in the nation as compared to all others and thereby could increase costs to new consumers.

Our guarded support for the bill before you is conditioned, however, on the bill remaining precisely as it is in its current form. Our real concern is that this bill is nothing more than a proverbial "Trojan horse" for provisions that this Committee considered last year and chose not to adopt. As you will recall, a certain proponent of a "disclosure" bill last year, the Fortress Investment Group, presented language to this committee last year under the guise of disclosure and transparency. However, those provisions realized much more than simple disclosure. The keystone of last year's bill was the creation of a right of action in Superior Court for the hedge fund managers, such as Fortress, which invested heavily in these life insurance instruments. That right of action would have provided the hedge fund managers with the ability to mitigate substantially, if not eliminate entirely, any risk

associated with their investment when the carrier exercised its negotiated, contractual rights to increase premiums.

Although that language has not been raised by the Committee and, therefore, will not be subject to public scrutiny, we respectfully state that, if similar language were to be presented by Fortress in the course of the legislative process, Phoenix would oppose it without reservation. Certainly, such a serious issue warrants a public process.

Despite the choice of this Committee last year, Fortress has continued its efforts to introduce specifically beneficial legislation in other states, and we believe that Fortress is continuing its campaign here in Connecticut as well. For the benefit of the Committee, I have attached an article published last week regarding their activities in South Dakota and Florida. As you will see, these efforts have been met with strong opposition for the right reasons.

Again, as stated, Phoenix offers limited and conditional support for the bill before you and requests that it NOT be amended in the course of the legislative process.

Thank you for your attention and I am happy to answer any questions that you may have.

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# Life insurers fight hedge fund legislation

Insurers say the proposed state laws will encourage STOLI, hedge funds say they want to preserve secondary market

BY ELIZABETH D. FESTA

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Life insurers are beating back legislative attempts in various states by hedge funds who invest in the life settlement industry and settlement providers to keep premiums on resold life insurance policies once they have been deemed to have been fraudulently obtained.

Such a situation, called a STOLI – stranger-originated life insurance – or a policy taken out with the purpose of reselling it to a person who does not have an insurable interest in the life of the original insured.

Hedge funds who are stuck with STOLIs as part of their secondary market portfolio of life settlements

want the laws rewritten so insurance companies return the premium to them, the owner of the policy, even though the policy was fraudulently obtained.

Currently, if a policy is found to be fraudulently obtained, courts have allowed life companies to keep the premium.

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States that have introduced legislation recently, in this session or last year, or may be contemplating it include Florida, South Dakota, Delaware, Connecticut and Minnesota. There were attempts last year that took the life industry in some instances by surprise, and it looks as if proponents have redoubled their efforts for the 2013 legislative sessions in some key states.

In South Dakota, the first place an attempt has surfaced this year, SB 134 was tabled, if not killed outright, earlier this month.

The issue is so important to the life industry and certain hedge funds that hold life settlement investments that they decamped to South Dakota a couple of weeks ago to participate in a hearing on SB 134.

SB 134, which did not pass, but could surface back later under the state's legislative procedures, would allow all premiums plus interest to be recovered by the owner's "designated representative" if a life insurance policy is deemed void or otherwise terminated or extinguished in accordance with the law for any reason other than nonpayment of premium.

In South Dakota, the first place an attempt has surfaced this year, SB 134 was tabled, if not killed outright, earlier this month.

"South Dakota has no STOLI laws on its books. That may explain one reason why the issue surfaced there first," said a representative of the American Council of Life Insurers (ACLI).

Proponents of the proposed law who travelled out to South Dakota in the middle of winter, included two representatives from the hedge fund Fortress Investment Group, one from Institutional Life Markets Associations, and one from Life Equity LLC, a leading life settlement provider.

Fortress has bought hundreds of millions in the life settlement market to bolster life settlement funds in its portfolio. Overall, it reported \$51.5 billion in assets under management as of Sept. 30, 2012.

Insurers and agents against the bill were represented by two lobbyists from the ACLI, one person from Prudential Life Insurance Co., one person from State Farm Insurance, local affiliates of the Independent Insurance Agents of South Dakota and one person from the National Association of Insurance and Financial Advisors (NAIFA) of South Dakota.

In Florida Wednesday, Feb. 20, advocates for seniors, veterans and others as a group called STANDUP for Seniors Coalition, held a press conference with a top state legislator to protest a bill expected to be introduced there that they feel would bolster the STOLI market.

"We anticipate that some speculators will once again try to push for legislative changes this year that will incent investors to participate in these STOLI arrangements," said Paul Brawner, a life insurance agent and CEO of the National Association of Insurance and Financial Advisors Florida (NAIFA-Florida). "We urge lawmakers to be aware of any attempt that would preserve value in policies that have been obtained fraudulently or reduce the ability of life insurers to detect fraud."

"It is imperative that my colleagues in the House and Senate understand how fraudulent STOLI arrangements hurt Florida seniors," said Rep. Bryan Nelson, R-Apopka, chairman of the Florida House Insurance and Banking Subcommittee and an insurance agent by trade. "We must not encourage speculators and other investors to profit from stranger-originated life insurance arrangements, which hurt Florida's seniors and make them targets for scams."

"NAIFA and our state associations will be working with the ACLI in the states to oppose these types of bills, which NAIFA believes will help enable stranger-originated life insurance transactions," said Gary Sanders, NAIFA's securities & state government top lobbyist. "NAIFA has a long-standing policy in opposition to STOLI as a practice that violates the essential social purpose of life insurance—to provide financial protection to families or businesses. NAIFA's state association in Florida is a member of a new coalition, Stand Up for Seniors, which was formed to put a focus on this issue and educate consumers."

Leah Wallers, ACLI regional vice president, state relations – Mid-Atlantic, say the law will encourage STOLI behavior. If the contract was stricken because it was fraudulent, then insurers should not have to return premiums, Wallers said.

Insurers do return premiums when both parties agree to rescind the contract, she said.

She suggested courts can work out who gives what to whom but it should not be a matter of law to return premiums and interest when fraud is involved.

Fortress, a global alternative investment and asset management firm founded in 1998 by BlackRock veterans, won't actively acknowledge any involvement in the spate of legislation brewing, but has complained about the life insurance industry's alleged role in promoting STOLIs as a tactic, and thinks it should not suffer because of insurer and agent behavior.

Fortress said through a spokesperson that it seeks to preserve the secondary market for life policies through its actions as an investor saddled with contracts insurers claim are fraudulent, and that it believes there are only a few bad actors out there in an otherwise attractive secondary market.

Fortress filed suit against the Phoenix Companies and sister companies in U.S. District Court last August, in *Lima LS PLC v. PHL Variable Insurance Co et al*, alleging multiple violations of the Connecticut Antitrust Act, fraud and the RICO Racketeer influenced and corrupt organizations act, for alleged schemes to increase demand in the secondary market for its life policies while later on suing to void policies to deny death benefits claiming STOLI on the policies it had designed and promoted for sale on the secondary market. Such alleged activity took place between 2003 and 2009.

"Fortress is known to use aggressive tactics -- including regulatory complaints and litigation as well as special interest legislation -- to maximize its own returns," said Phoenix through a spokeswoman. "The Lima case is an illustration of these tactics. The failed legislative attempt in South Dakota and ongoing efforts in other states to change the rules around return of premium for illegal or invalid policies are other examples."

"We take it seriously when there is clear misrepresentation, fraud or the misuse of insurance policies as wagers on human life, and where appropriate, take action in order to protect shareholder and policyholder interests," Phoenix stated.

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